

ORIGINAL

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN D. PERKEY and THERESA M.
PERKEY,

Plaintiffs

vs.

RELIABLE CARRIERS, INC.,
DANIEL JOSEPH BEMBEN and KENT,
Defendants

CIVIL ACTION NO. 1:CV-00-1639

JURY TRIAL DEMANDED

Magistrate Judge Smyser ✓

FILED
HARRISBURG, PA

MAY 19 2003

MARY E. D'ANDREA, CLERK
Per. 98 Deputy Clerk

**DEFENDANT RELIABLE CARRIERS, INC. AND DANIEL JOSEPH BEMBEN'S
BRIEF IN SUPPORT OF THEIR MOTION IN LIMINE FOR A SETOFF AGAINST
ANY VERDICT IN THE AMOUNT OF FIRST PARTY BENEFITS PAID BY
PRUDENTIAL INSURANCE COMPANY**

A. PROCEDURAL HISTORY & FACTS

Plaintiffs began this action by filing a Complaint on September 14, 2000. Defendant Reliable Carriers, Inc. ("Reliable") and Daniel Joseph Bemben ("Bemben") filed an Answer with Affirmative Defenses denying all liability on January 29, 2001. Reliance Insurance Company ("Reliance") insured Reliable and Bemben at the time of the accident. While Plaintiffs' suit against Reliable and Bemben was pending, Reliance became insolvent, and The Michigan Property and Casualty Guaranty Association ("MPCGA"), the sister association to the Pennsylvania Property and Casualty Guaranty Association ("PIGA"), assumed responsibility. The Statement of Facts section contained in Defendants' Brief in Support of their Motion for Summary Judgment is incorporated herein as if set forth at length. Following the accident, Plaintiffs received a wage loss payment in the amount of \$5,000.00 from Prudential Insurance Company. In addition, Plaintiffs received \$5,000.00 as a settlement of their uninsured motorist claim. Because of these payments, Defendants are entitled to a setoff in the amount of \$10,000.00 against any verdict.

B. ISSUE

WHETHER RELIABLE AND BEMBEN ARE ENTITLED TO A \$10,000.00 SETOFF WHICH IS THE AMOUNT OF FIRST PARTY BENEFITS PAID BY PRUDENTIAL INSURANCE COMPANY?

Suggested Answer: Yes.

D. ARGUMENT

Section 991.1817, Non-duplication of recovery, of the Pennsylvania Statute states in subsection (a) the following:

Any person having a claim under an insurance policy shall be required to exhaust first his right under such policy. For purposes of this section, a claim under an insurance policy shall include a claim under any kind of insurance, whether it is a first-party or third-party claim, and shall include, without limitation, accident and health insurance, worker's compensation, Blue Cross and Blue Shield and all other coverages except for policies of an insolvent insurer. **Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under other insurance.**

40 P.S. Sec. 991.1817(a).

Section 500.7931(3) of the Michigan Compiled Laws Annotated states the following:

If damages or benefits are recoverable by a claimant or insured under an insurance policy other than a policy of the insolvent insurer, or from a motor vehicle accident claims fund, or a similar fund, the damages or benefits recoverable shall be a credit against a covered claim payable under this chapter . . . An insurer or a fund may not maintain an action against an insured of the insolvent insurer to recover an amount which constitutes a credit against a covered claim under this section.

M.C.L.A. 500.7931.

Pursuant to both the Pennsylvania and Michigan Acts, the Defendants are entitled to a \$10,000.00 dollar setoff or credit against any verdict because of the payments made by

Prudential Insurance Company. As was stated in Defendants' Motion for Summary Judgment, which is incorporated herein as if it were set forth at length, the Acts are not designed to make people whole but to protect insureds and claimants from financial loss.

E. CONCLUSION

WHEREFORE, for all of the foregoing reasons, Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben, respectfully request that this Honorable Court issue an order entitling Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben to a setoff and/or credit in the amount of \$10,000.00 against any verdict.

Respectfully submitted,

GODFREY & COURTNEY, P.C.

By: _____



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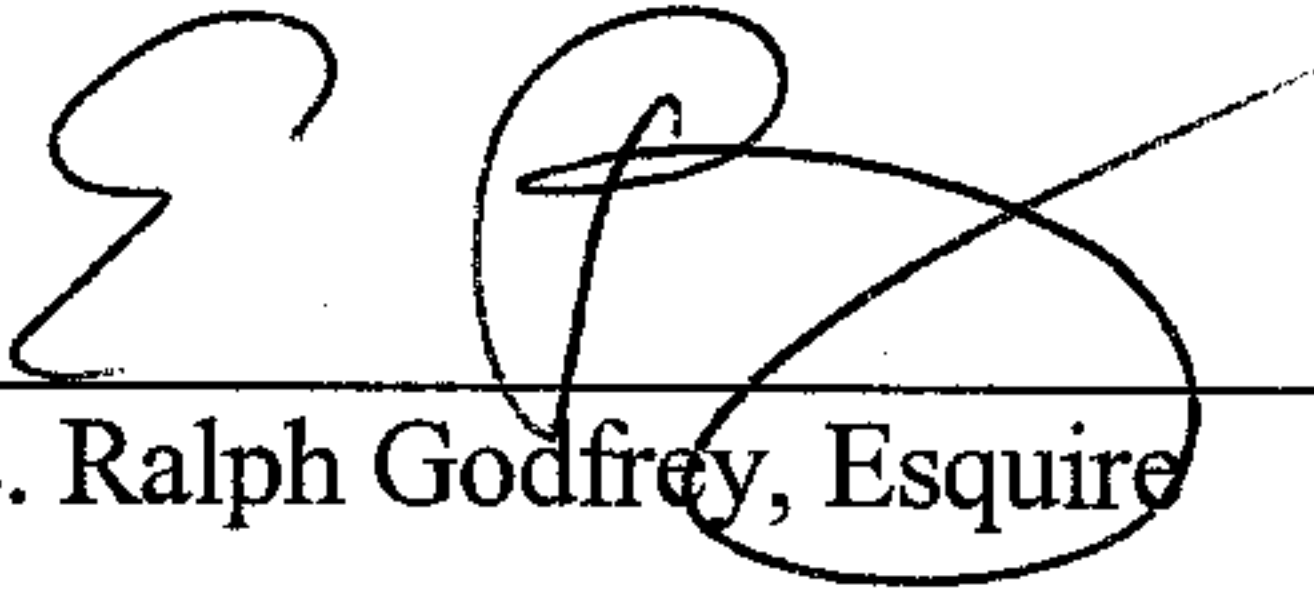
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CERTIFICATE OF SERVICE

I, E. Ralph Godfrey, Esquire of the law firm Godfrey & Courtney, P.C., hereby certify that I served a true and exact copy of *Defendants' Brief in Support of their Motion in Limine to Setoff the Verdict with* reference to the foregoing action by First Class Mail, postage prepaid, this 7th day of May, 2003 on the following:

Marcus McKnight, Esquire
Mark D. Schwartz, Esquire
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GODFREY & COURTNEY, P.C.



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